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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/099,685	03/14/2002	Daniel R. Potter	005127.00033	4915

22909 7590 09/08/2004

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EXAMINER


RUDY, ANDREW J

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/099,685	Applicant(s) POTTER ET AL. 	
	Examiner Andrew Joseph Rudy	Art Unit 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2004 & 9 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-14 are pending. Claims 1-9 are still withdrawn from consideration.

Response to Arguments

2. Applicant's Request for Reconsideration has been reviewed.

Claim Rejections - 35 USC § 112

3. The rejection under 35 U.S.C. 112, second paragraph, is withdrawn pursuant to Applicant's Amendment and REMARKS.

Claim Rejections - 35 USC § 103

4. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoda, US 5,515,268, in view of Potter, US 5,714,098, and further in view of Kelly, Jr., 5,783,810.

Yoda discloses an apparatus for ordering products, e.g. footwear, comprising an order receiving unit, e.g. col. 2, line 59, and footwear inventory, e.g. memory, for receiving orders from customers, e.g. claims. Yoda discloses an inventory of various footwear sizes communicated over an electronic network. Yoda does not specifically disclose the term shoe distribution center and footwear manufacturing units.

It is noted that shoe distribution centers and footwear manufacturing units have been common knowledge in the art prior to Applicant's inventive disclosure. Official Notice is taken thereof.

Potter discloses a shoe footwear inventory 9 containing a variety of sizes, a manufacturing unit 13 that may be located at a regional warehouse, e.g. a shoe distribution center and an order receiving unit that receives orders from retail stores, and a plurality of lasts in storage 15. Potter does not specifically disclose the term shoe distribution center.

Kelly discloses the common knowledge shoe distribution centers for receiving orders from retail stores.

To have provided a shoe distribution centers for receiving orders from retail stores for Yoda would have been obvious to one of ordinary skill in the art in view of Potter as modified by Kelly. The motivation for doing such is to provide common knowledge and well known distribution centers for receiving orders from retail stores for custom fit footwear associated with last size.

It is noted that intended use claim language, e.g. for footwear or for remolding, are given patentable weight, but not the same patentable weight as positively recited claim limitations, e.g. an order receiving unit.

5. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoda, US 5,515,268, in view of Potter, US 5,714,098, in view of Kelly, Jr., 5,783,810, and further in view of White et al., US 5,339,252.

White discloses an electronic network system for last manufacturing for custom fitting footwear where a central storage facility last database 116 stores the particular sizing information

used for producing a last where pieces of footwear in inventory are molded to lengths and shapes that are different from the original shape of the inventory (col. 3, lines 28-68, col. 10, lines 46-65) and footwear database 104 containing customer records for trend analysis 106. To have provided Yoda, in view of Potter, in view of Kelly, an electronic communication network containing customer records for trend analysis would have been obvious to one of ordinary skill in the art in view of White. The motivation for doing such would be tracking of common knowledge customer history data. To have associated a last with such data would have been an obvious variant for one of ordinary skill in the art. The motivation for doing such would be to keep track of one variant of the customer history data.

5. Applicant's Information Disclosure Statement (IDS) has been received on July 9, 2004. Each document has been reviewed except for the one crossed out as this document was already cited on the September 20, 2003 IDS. Note attached PTO-1449.

6. A further reference is noted. See attached PTO-892.

Conclusion

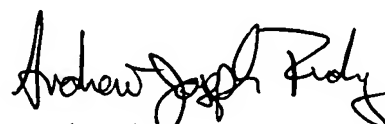
7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Joseph Rudy whose telephone number is 703-308-7808. The examiner can normally be reached on Tuesday thru Friday, 7:30 a.m until 6 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Robert Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


September 6, 2004

